

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

|   |   |                             |
|---|---|-----------------------------|
| IN THE MATTER OF:   | ) |                             |
|   | ) |                             |
| United States Enrichment Corporation, Portsmouth Gaseous Diffusion Plant 3930 US 23, Perimeter Road Piketon, Ohio | ) | Docket No. CAA-5- 99-005    |
|   | ) | Proceeding to Assess        |
|   | ) | Administrative Penalties    |
|   | ) | under Section 113(d) of the |
|   | ) | Clean Air Act,              |
|   | ) | 42 U.S.C. Section 7413(d)   |
| Respondent.   | ) |                             |
| _____   | ) |                             |

ADMINISTRATIVE COMPLAINT

This is an action for the assessment of a civil administrative penalty brought, pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" (Consolidated Rules), 40 C.F.R. Part 22, against Respondent United States Enrichment Corporation, Portsmouth Gaseous Diffusion Plant (USEC) for administrative penalties.

Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator to issue an Administrative Order against any person(s), assessing a civil administrative penalty whenever, on the basis of any available information, the Administrator finds that such person(s) has violated or is violating any requirement or prohibition of Title III of the Act (in addition to other

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requirements and prohibitions). The Complainant is, by lawful delegation, the Director of the Air and Radiation Division of the United States Environmental Protection Agency (U.S. EPA), Region 5.

#### **STATUTORY AND REGULATORY BACKGROUND**

1. Pursuant to Section 112(b) of the Act, 42 U.S.C. § 7412(b), the Administrator of the U.S. EPA listed radionuclides as a hazardous air pollutant and prescribed a national emission standard for hazardous air pollutants (NESHAP) for radionuclides.
2. The NESHAP for radionuclides from the Department of Energy facilities is codified at 40 C.F.R. Part 61, Subpart H, §§ 61.90 to 61.97.
3. The NESHAP for radionuclides applies to, inter alia, operations at any facility owned or operated by the Department of Energy that emits any radionuclide other than radon-222 and radon-220 into the air. 40 C.F.R. § 61.90.
4. "Owner or Operator" means any person who owns, leases, operates, controls or supervises a stationary source. 42 U.S.C. § 7412(a)(9).
5. "Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).
6. "Facility" means all buildings, structures and operations on one contiguous site. 40 C.F.R. § 61.91(a).

7. "Radionuclide" means a type of atom which spontaneously undergoes radioactive decay. 40 C.F.R. § 61.91(c).

**GENERAL ALLEGATIONS**

8. At all times relevant to this complaint, USEC operated a facility owned by the Department of Energy located at 3930 US 23, Perimeter Road, Piketon, Ohio.

9. Respondent, USEC is a "person" as defined at Section 302(e) of the Act, U.S.C. §7602(e).

10. At all times relevant to the complaint, USEC operated a "facility," as defined by 40 C.F.R. §61.91(a).

11. At all times relevant to the complaint, the operations of the facility resulted in emissions of radionuclides, as defined by 40 C.F.R. §61.91(c).

**COUNT I**

12. Paragraphs 1 through 11 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.

13. 40 C.F.R. § 61.94 requires that owners and operators of each subject facility submit an annual report to EPA headquarters by June 30 which includes the results of the monitoring, as recorded in DOE's Effluent Information System, and the dose calculations required by §61.93(a) for the previous calendar year and additional information as set forth in §61.94(b).

14. On or before June 30, 1998, USEC failed to submit the

required annual report to EPA headquarters.

15. USEC's failure to submit the annual report by the required date of June 30, 1998, constitutes a violation of 40 C.F.R. § 61.94.

16. USEC's violation of 40 C.F.R. § 61.94 subjects USEC to liability for a civil administrative penalty pursuant to Section 113(d) of the Act, 42, U.S.C. Section 7413(d).

### **COUNT II**

17. Paragraphs 1 through 16 of this Administrative Complaint are hereby incorporated by reference as if fully set forth in this paragraph.

18. 40 C.F.R. § 61.94 requires that owners and operators of each subject facility submit an annual report to the appropriate regional office by June 30, which includes the results of the monitoring, as recorded in DOE's Effluent Information System, and the dose calculations required by §61.93(a) for the previous calendar year and additional information as set forth in §61.94(b).

19. On or before June 30, 1998, USEC failed to submit the required annual report to Region 5, which is the appropriate regional office.

20. USEC's failure to submit the annual report by the required date of June 30, 1998, constitutes a violation of 40 C.F.R. § 61.94.

21. USEC's violation of 40 C.F.R. § 61.94 subjects USEC to the issuance of Administrative Order assessing a civil administrative penalty pursuant to Section 113(d) of the Act, 42, U.S.C. Section 7413(d).

**NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

22. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, the Administrator of U.S. EPA may assess a civil penalty not to exceed \$25,000 per day up to a total of \$200,000 for each violation of the NESHAP for radionuclides that occurred prior to January 31, 1997, and not to exceed \$27,500 per day up to a total of \$220,000 for each such violation which occurred on or after January 31, 1997.

23. Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires the Administrator to take the following factors into consideration when determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by any credible evidence; payment by Respondent of penalties previously assessed for the same violations; the economic benefit of noncompliance; the seriousness of the violations; and such other factors as justice may require.

24. Based upon the facts alleged in this Complaint and after consideration of the factors discussed above as they relate to Respondent and to the facts and circumstances of Respondent's violations, U.S. EPA hereby proposes to issue to Respondent a Final Order assessing administrative civil penalties in the amount of eighty-four thousand dollars (\$84,000.00). This proposed penalty has been calculated in accordance with Section 113(e)(1) of the CAA. In developing the penalty proposed in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy ("Penalty Policy"), a copy of which is enclosed with this Complaint.

25. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes bonafide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

26. Respondent shall pay the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency  
Region 5

P.O. Box 70753  
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and

Nidhi K. O'Meara (C-14J)  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**OPPORTUNITY TO REQUEST A HEARING**

26. Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you must specifically make such request in your Answer, as discussed in Paragraphs 29a. through 29c. below. Any hearing which you request regarding the Complaint will be held and conducted in accordance with the provisions of the

Consolidated Rules.

**ANSWER**

27. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the deadline shall be extended to the next business day.

28. Your Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge regarding a particular factual allegation which you cannot admit, deny or explain, in which case the allegation will be deemed denied.

29. Your Answer shall also state with specificity:

- a. The circumstances or arguments which you allege constitute grounds for defense;
- b. The facts that you intend to place at issue; and
- c. Whether you request a hearing as discussed above.

30. Your failure to admit, deny or explain any material factual allegation in the Administrative Complaint will



constitute an admission of the allegation. You should further note that the Administrator's Rules provide that any hearing that shall be held will be a "hearing upon the issues raised by the complaint and answer."

31. You must send a copy of your Answer and of any documents subsequently filed in this action to Nidhi K. O'Meara, Assistant Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Ms. Nidhi K. O'Meara at (312)886-0568.

32. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order pursuant to 40 C.F.R. § 22.17(a). Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. § 22.27 or § 22.31.

#### **SETTLEMENT CONFERENCE**

33. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Mr. Michael Murphy, Air Enforcement and Compliance Assurance

Branch (AE-17J), Air and Radiation Division, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Mr. Murphy at (312) 353-6686.

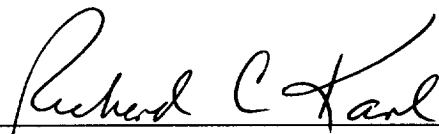
34. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order issued pursuant to 40 C.F.R. § 22.27 shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

**CONTINUING OBLIGATION TO COMPLY**

35. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the CAA or any other Federal, State or local law or regulation.

2-8-99

Date

  
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Richard C. Karl, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

In the Matter of United States Enrichment Corporation,  
Portsmouth Gaseous Diffusion Plant

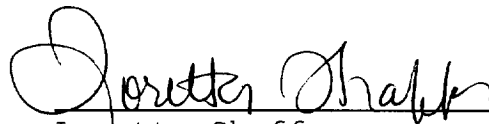
Docket No.

**CAA-5-9-005**

CERTIFICATE OF SERVICE

I, Loretta Shaffer, do hereby certify that the original of the foregoing Administrative Complaint was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that correct copies, along with a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, and a copy of the Penalty Policy (described in the Complaint) was mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows

on the 11th day of February, 1999.



Loretta Shaffer  
AECAB (RAIS)

CERTIFIED MAIL RECEIPT NUMBER: P 300 759 704

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